

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #5

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2001 NOV 19 P 12:14

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Board of Accountancy TITLE NUMBER: 1

CITE AUTHORITY: W.Va. Code §§30-9-1 et seq., 30-1-1 et seq., 29A-5-1 et seq.

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO _____

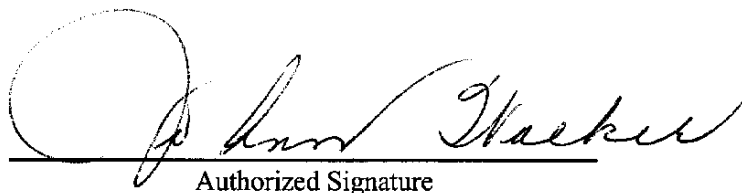
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Disciplinary and Complaint Procedures for
Applicants, Licensees and Substantial Equivalency Practitioners

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS December 19, 2001


Authorized Signature

**West Virginia
Board of Accountancy**

122 Capitol Street, Suite 100
Charleston, West Virginia 25301



Board Members:
Jack Rossi, CPA, President
Edward P. McDonough, CPA, CVA, V. Pres.
Reed J. Tanner, CPA, Secretary
Norman T. Daniels, CPA
Roy Rishel, PA
Gayle E. Mason, CPA

Bob Wise, Governor

Jo Ann Walker, Executive Director

To: Judy Cooper
Administrative Law Division
Secretary of State's Office

From: Jo Ann Walker
Executive Director
West Virginia Board of Accountancy

Date: November 19, 2001

Re: Disciplinary and Complaint Procedures for Applicants, Licensees and Substantial
Equivalency Practitioners (1CSR3)

There were no comments regarding this filing.

TITLE 1
PROCEDURAL RULE
BOARD OF ACCOUNTANCY

SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURES FOR
APPLICANTS, LICENSEES AND SUBSTANTIAL
EQUIVALENCY PRACTITIONERS

FILED

2001 NOV 19 P 12: 14

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§1-3-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against licensees, applicants for licensure and substantial equivalency practitioners.

1.2. Authority. -- W. Va. Code §§30-9-1 et seq., 30-1-1 et seq. and 29A-5-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

§1-3-2. Application.

This rule applies to all licensees, applicants and substantial equivalency practitioners.

§1-3-3. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

3.1. "Act" means W. Va. Code §§30-9-1 et seq.

3.2. "Applicant" means any person or firm making application for the initial issuance of a license pursuant to W. Va. Code §30-9-1 et seq.

3.3. "Authorization" means an authorization issued pursuant to the Act that entitles a permit holder or an individual practitioner to perform attest or compilation services.

3.4. "Board" means the West Virginia Board of Accountancy.

3.5. "Certificate" means a certificate as a certified public accountant issued or renewed by

the Board pursuant to the Act or corresponding provisions of prior law.

3.6. "Ethics investigator" means a person or board committee member holding a certificate or registration who is hired or directed by the Board for the purpose of reviewing complaints against licensees, applicants and substantial equivalency practitioners under the Board's authority.

3.7. "License" means a certificate, permit, registration or authorization..

3.8. "Licensee" means the holder of a license.

3.9. "Permit" means a permit issued to a firm pursuant to the Act.

3.10. "Registration" means a registration as a public accountant issued by the Board pursuant to prior law governing the registration of public accountants and renewed by the Board pursuant to the Act.

3.11. "Substantial equivalency practice privilege" means the privilege of practicing in this State accorded to a substantial equivalency practitioner.

3.12. "Substantial equivalency practitioner" means any individual holding an out-of-state certificate who has notified the Board of his or her intent to practice accountancy in this State under the provisions of the Act and has complied with the provisions of section 16 of the Act.

§1-3-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of a License or Substantial Equivalency Practice Privilege.

The Board may refuse to issue, refuse to renew, suspend, revoke or limit any license or substantial equivalency practice privilege of any applicant, licensee, substantial equivalency practitioner or firm practicing in this state if, after a hearing, the Board has adjudged the applicant, licensee, substantial equivalency practitioner or firm to have violated any of the provisions of section 20 of the Act.

§1-3-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges an applicant licensee, substantial equivalency practitioner or firm with a violation of W. Va. Code §30-9-1 et seq. or of the rules of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

5.1.1. The name and address of the public accountant or applicant against whom the complaint is lodged;

5.1.2. The date of the alleged wrongful conduct;

5.1.3. The nature of the alleged wrongful conduct.

5.2. A complaint against an applicant licensee, substantial equivalency practitioner or firm shall allege that such person or firm has violated any of the provisions of section 20 of the Act.

5.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

5.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.5. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the applicant, licensee, substantial equivalency practitioner or firm in question for written comment, and the applicant, licensee, substantial equivalency practitioner or firm shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.

5.8. A request for comment on a complaint sent to an applicant, licensee, substantial equivalency practitioner or firm shall be considered properly served when sent to their last known address. It is the responsibility of the applicant, licensee, substantial equivalency practitioner or firm to ensure that the Board has a current address.

5.9. Upon receipt of comments from the applicant, licensee, substantial equivalency practitioner or firm in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of sub-division 5.6 of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints or investigation thereof may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an ethics investigator for review and investigation.

5.12. Upon receipt of a complaint the ethics investigator or investigating committee shall, within sixty (60) days, review and investigate the same and provide the Board with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint including a description of the care provided, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, registrant, certificate holder or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

5.13. To facilitate the disposition of a complaint, the Board or the investigating committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. The Board or the committee shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall be attached for failure to attend a conference pursuant to a request.

5.14. The Board, its president, the investigating committee or chairperson may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The ethics investigator may request the Board or its president to issue a subpoena or subpoena duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.

5.15. At any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege

misconduct for which an applicant, licensee, substantial equivalency practitioner or firm shall may be disciplined by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the investigating committee or an ethics investigator, the committee or ethics investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§1-3-6 Contested Case Hearings.

6.1. The Board may refuse to renew suspend, revoke or limit any license or substantial equivalency practice privilege of any licensee, substantial equivalency practitioner or firm if it determines there is probable cause to believe that the licensee, substantial equivalency practitioner or firm has committed conduct, practices or acts which constitute an immediate danger to the public.

§1-3-7. Appeals.

7.1. Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in W. Va. Code §29A-5-1 et seq. and the rules of the Board: Provided, that the appeal shall not include cases in which the Board denies a certificate to an applicant therefor after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.